

§ 689.7 [Amended]

b. Change "DGC, OGC," to "the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel," in § 689.7(a).

[FR Doc. 94-17779 Filed 7-21-94; 8:45 am]
BILLING CODE 7555-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 93-1; FCC 94-183]

Radio Scanners That Receive Cellular Telephone Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This *Memorandum Opinion and Order* denies a petition for reconsideration of new regulations that deny equipment authorization to radio scanners capable of receiving transmissions in the Domestic Public Cellular Radio Telecommunications Service. This action is taken in response to a petition for reconsideration filed by Kenwood Communications Corporation. The intended effect of this action is to help ensure the privacy of cellular telephone conversations.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in ET Docket No. 93-1, FCC 94-183, adopted July 8, 1994, and released July 19, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services at (202) 857-3800 or 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. By this action, the Commission denies a request by Kenwood Communications Corporation (Kenwood) for reconsideration of portions of the rules adopted in the *Report and Order* in this proceeding. These rules were adopted in response to the Telephone Disclosure and Dispute

Resolution Act (TDDRA), Pub. L. 102-556, and generally prohibit the manufacture and importation of radio scanners capable of receiving cellular telephone communications. See *Report and Order* in ET Docket No. 93-1, 58 FR 25574, April 27, 1993.

2. In its Petition for Reconsideration, Kenwood raises three issues. First, it argues that the deadlines for complying with the rules adopted in this proceeding should be extended. Second, it requests that scanners sold to Military Affiliate Radio Service (MARS) and Civil Air Patrol (CAP) licensees be exempt from the regulations adopted in this proceeding. Finally, it argues that the definition of "readily altered by the user" that was adopted in this proceeding should include only scanners that can be modified "quickly" by "non-technical" consumers. There were no comments filed in response to the Kenwood petition.

3. Implementation dates. Kenwood contends that the April 26, 1993, cutoff date for equipment authorization and the April 26, 1994, cutoff date for manufacture and importation of scanners that do not comply with the new rules do not provide sufficient time to design and build new products to replace those being prohibited. This short period of time is, however, mandated by the TDDRA and reflects the position of Congress that reception of cellular communications by means of scanning receivers is a serious problem that must be resolved expeditiously. Accordingly, we are denying Kenwood's request for an extension of the cutoff dates.

4. Exemption for equipment sold to MARS and CAP licensees. Kenwood states that it manufactures two-way transceivers that are generally set up to operate only on frequencies available within a particular radio service. Kenwood indicates that some of its transceivers are routinely modified at its factory to operate on additional frequencies, such as those used by MARS and CAP licensees, in order to accommodate the needs of its customers. Kenwood states that these factory modifications can result, incidentally, in the ability to scan cellular telephone frequencies.

5. We see no reason why it is not possible to manufacture equipment to operate on MARS and CAP frequencies without resulting in that equipment also having the capability to receive the cellular frequencies, since MARS and CAP frequencies are far removed from the cellular frequencies. Consequently, we find that there is no technical justification for exempting scanning equipment from the rules adopted in

this proceeding based on its intended use by MARS or CAP licensees, and we are denying Kenwood's request.

6. The definition of "readily altered by the user." Kenwood requests that we modify the definition of "readily altered by the user" to include only devices that can be quickly modified by "non-technical consumers."

7. We believe that Kenwood's proposed definition would make it too easy to modify scanners. Most of the examples given in our definition of scanners that can be "readily altered by the user" are modifications that perhaps could not be done by "non-technical consumers." Yet, they are examples of precisely the kind of easy modifications that we believe the TDDRA was intended to prohibit.

Accordingly, we are rejecting Kenwood's request.

8. In accordance with the above discussion and pursuant to the authority contained in Sections 4(i), 302 and 303 of the *Communications Act of 1934*, as amended, and the *Telephone Disclosure and Dispute Resolution Act*, it is ordered that the Petition for Reconsideration filed by Kenwood Communications Corporation is denied.

9. For further information on this proceeding, contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, at (202) 653-8138.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, wiretapping and electronic surveillance.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-17846 Filed 7-21-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition To List the Southern Rocky Mountain Population of the Boreal Toad as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the

142-94

southern Rocky Mountain population of the boreal toad (*Bufo boreas boreas*) to the List of Threatened and Endangered Wildlife. The Service finds the petition presents substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this notice was made on July 14, 1994. Comments and materials need to be submitted by September 20, 1994, to be considered in the 12-month finding.

ADDRESSES: Information, comments, or questions concerning this petition may be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 730 Simms Street, Suite 290, Golden, Colorado 80401. The petition, finding, and supporting documents are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Ireland, U.S. Fish and Wildlife Service, Ecological Services, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506-3946, telephone, (303) 243-2778.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation presents substantial scientific and commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be promptly published in the **Federal Register**. If the finding is positive, the Service also is required to commence a review of the status of the petitioned species.

The Service announces a 90-day finding on a petition requesting the Service to list as endangered the southern Rocky Mountain population of the "western boreal toad" (*Bufo boreas boreas*) and initiates a status review.

A petition dated September 27, 1993, was received by the Service from the Biodiversity Legal Foundation and Dr. Peter Hovingh on September 30, 1993. The petition requested that the southern Rocky Mountain population of the "western boreal toad" be listed as endangered and that critical habitat be designated.

The Act allows the Service to list distinct population segments of vertebrate fish and wildlife. Physical

and climatic characteristics of the Great Divide Basin separate boreal toads in the southern Rocky Mountains (New Mexico, Colorado, and southeastern Wyoming) from populations in the Wasatch and Uinta Mountains of Utah to the west and the Wind River and Salt River Ranges of Wyoming to the north. The Basin's hot, dry summers, lack of available water, and high desert vegetation provide unsuitable habitat for the toad. Movement of toads between the southern Rocky Mountains and populations in western Wyoming and eastern Utah is unlikely because of the great distance (>165 km (100 miles)) and harsh environment. Because of this geographic isolation, possible genetic differentiation exists between toads in the southern Rocky Mountains and the remainder of their range (Blair 1964, Hubbard 1972). Considering these factors, the Service believes the southern Rocky Mountain population of the boreal toad is a distinct population segment.

A status review was first initiated for the southern Rocky Mountain population of *B. b. boreas* by a notice of review published January 6, 1989 (54 FR 554). At that time the population was designated as a category 2 candidate, meaning that more information was needed before a decision could be made as to whether this population should be listed.

Boreal toads were once common throughout much of the higher elevations in Colorado (Burger and Bragg 1946, Smith et al. 1965, Hammerson 1989) and in the Snowy and Sierra Madre Ranges of southeastern Wyoming (Baxter and Stone 1985). Boreal toads were found at only three localities at the southern periphery of their range in the San Juan Mountains of New Mexico: Lagunitas, Canjilon, and Trout Lakes (Campbell and Degenhardt 1971, Jones 1978, New Mexico Department of Game and Fish 1988).

Declines in isolated demes were first documented in New Mexico in the mid-1980's (Woodward and Mitchell 1985, Carey 1987) and in Colorado and southern Wyoming from 1986 through 1988 (Corn et al. 1989). Boreal toads are listed as endangered by the State of New Mexico and are thought to be extirpated (New Mexico Department of Game and Fish 1988). Surveys conducted in 1989 and 1993 revealed no populations at the three previously known San Juan Mountain locations in Rio Arriba County, New Mexico (Charlie Painter, New Mexico Department of Game and Fish, pers. comm., 1993). Carey (1993) also documented the extirpation of 11 demes in the Elk and West Elk

Mountains of west-central Colorado. Corn et al. (1989) found that boreal toads were absent from 83 percent of locations in Colorado previously known to contain toads. Subsequent surveys conducted by the Service and others in Colorado indicate that boreal toads continue to disappear from traditional localities or are absent from locations that contain suitable habitat (Steve Corn, National Biological Survey, unpubl. data, 1993; Hammerson 1989). No toad demes have been confirmed in Wyoming since 1987 (S. Corn, pers. comm., 1993).

No single factor known to cause direct loss of boreal toads in the southern Rocky Mountain population appears to be producing range-wide declines. Those factors that appear capable of affecting a population throughout all or most of its range cannot currently be linked to the decline of the southern Rocky Mountain population of the boreal toad. Low impact recreational activities such as hiking, camping, wildlife viewing, nonmotorized boating, and fishing may occasionally disrupt breeding pairs or trample recently metamorphosed juveniles along shorelines (Campbell 1970). High impact resource management strategies such as timber and grazing may alter or cause the destruction of boreal toad habitat. Other factors that may directly impact boreal toads are water retention projects, changes in water availability, competition and predation by native and nonnative species, and fishery management activities. State agencies have regulations to protect the southern Rocky Mountain population of the boreal toad from "take," but these measures in general do nothing to protect the toad's habitat from degradation or to protect the toads from other threats.

Factors that may cause indirect loss of toads include acid rain, pollution, and ultraviolet radiation. The potential effects of acid rain, pollution, ultraviolet radiation, and natural population fluctuations remain unknown and may be working synergistically with other environmental or anthropogenic factors to cause declines in toad populations. Carey (1987, 1993) indicated that the proximate cause of the widespread decline of boreal toads in northern New Mexico and west-central Colorado was a result of infection by *Aeromonas hydrophila* bacteria (red-leg disease). However, *A. hydrophila* is common in the microfauna carried by amphibians, and it does not cause infection or death in healthy individuals. As a result, toads likely were stressed by other adverse environmental factors, such as those